

§ 310.1

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 51 FR 2364, Jan. 16, 1986, unless otherwise noted. Redesignated at 56 FR 55631, Oct. 29, 1991.

Subpart A—DoD Policy

SOURCE: 65 FR 7732, Feb. 16, 2000, unless otherwise noted.

§ 310.1 Reissuance.

This part is reissued to consolidate into a single document (32 CFR part 310) Department of Defense (DoD) policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 522a) by authorizing the development, publication and maintenance of the DoD Privacy Program set forth by DoD Directive 5400.11,¹ December 13, 1999, and 5400.11-R,² August 31, 1983, both entitled: “DoD Privacy Program.”

§ 310.2 Purpose.

This part:

(a) Updates policies and responsibilities of the DoD Privacy Program under 5 U.S.C. 552a, and under OMB Circular A-130.³

(b) Authorizes the Defense Privacy Board, the Defense Privacy Board Legal Committee and the Defense Data Integrity Board.

(c) Continues to authorize the publication of DoD 5400.11-R.

(d) Continues to delegate authorities and responsibilities for the effective administration of the DoD Privacy Program.

§ 310.3 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences, the Defense agencies, and the DoD Field Activities

¹Copies may be obtained: <http://web7.whs.osd.mil/corres.htm>.

²See footnote 1 to § 310.1.

³Copies may be obtained: EOP Publications, NEOB, 725 17th Street, NW Washington, DC 20503.

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(hereafter referred to collectively as “the DoD Components”). This part is mandatory for use by all DoD Components. Heads of DoD Components may issue supplementary instructions only when necessary to provide for unique requirements within their Components. Such instructions will not conflict with the provisions of this part.

(b) Shall be made applicable to DoD contractors who are operating a system of records on behalf of a DoD Component, to include any of the activities, such as collecting and disseminating records, associated with maintaining a system of records.

(c) This part does not apply to:

(1) Requests for information from systems of records controlled by the Office of Personnel Management (OPM), although maintained by a DoD Component. These are processed in accordance with OPM’s ‘Privacy Procedures for Personnel Records’ (5 CFR part 297).

(2) Requests for personal information from the General Accounting Office (GAO). These are processed in accordance with DoD Directive 7650.1,⁴ “General Accounting Office Access to Records,” September 11, 1997.

(3) Requests for personal information from Congress. These are processed in accordance with DoD Directive 5400.4,⁵ “Provisions of Information to Congress,” January 30, 1978, except for those specific provisions in Subpart E—Disclosure of Personal Information to Other Agencies and Third Parties.

(4) Requests for information made under the Freedom of Information Act (5 U.S.C. 552). These are processed in accordance with “DoD Freedom of Information Act Program Regulation” (32 CFR part 286).

§ 310.4 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and

⁴See footnote 1 to § 310.1.

⁵See footnote 1 to § 310.1.

amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to non-DoD agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not "individuals."

Law enforcement activity. Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

Maintain. Includes maintain, collect, use or disseminate.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DoD 5200.1-R⁶ "DoD Information Security Program Regulation."

Personal information. Information about an individual that identifies, relates or is unique to, or describes him or her; e.g., a social security number,

age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.

Privacy Act request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

Record. Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc.), about an individual that is maintained by a DoD Component, including but not limited to, his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System manager. The DoD Component official who is responsible for the operation and management of a system of records.

System of records. A group of records under the control of a DoD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

⁶See footnote 1 to § 310.1.

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Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written or graphic presentations intended to communicate verbally or visually with another individual.

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programable software, handwiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

§ 310.5 Policy.

It is DoD policy that:

(a) The personal privacy of an individual shall be respected and protected.

(b) Personal information shall be collected, maintained, used or disclosed to ensure that:

(1) It shall be relevant and necessary to accomplish a lawful DoD purpose required to be accomplished by statute or Executive Order.

(2) It shall be collected to the greatest extent practicable directly from the individual.

(3) The individual shall be informed as to why the information is being collected, the authority for collection, what uses will be made of it, whether disclosure is mandatory or voluntary, and the consequences of not providing that information.

(4) It shall be relevant, timely, complete and accurate for its intended use; and

(5) Appropriate administrative, technical, and physical safeguards shall be established, based on the media (*e.g.*, paper, electronic, etc.) involved, to ensure the security of the records and to prevent compromise or misuse during storage or transfer.

(c) No record shall be maintained on how an individual exercises rights guaranteed by the First Amendment to the Constitution, except as follows:

(1) Specifically authorized by statute.

(2) Expressly authorized by the individual on whom the record is maintained; or

(3) When the record is pertinent to and within the scope of an authorized law enforcement activity.

(d) Notices shall be published in the FEDERAL REGISTER and reports shall be submitted to Congress and the Office of Management and Budget, in accordance with, and as required by, 5 U.S.C. 552a, OMB Circular A-130, and DoD 5400.11-R, as to the existence and character of any system of records being established or revised by the DoD Components. Information shall not be collected, maintained, used, or disseminated until the required publication/review requirements, as set forth in 5 U.S.C. 552a, OMB Circular A-130, and DoD 5400.11-R, are satisfied.

(e) Individuals shall be permitted, to the extent authorized by 5 U.S.C. 552a and DoD 5400.11-R, to:

(1) Determine what records pertaining to them are contained in a system of records.

(2) Gain access to such records and to obtain a copy of those records or a part thereof.

(3) Correct or amend such records on a showing that the records are not accurate, relevant, timely or complete.

(4) Appeal a denial of access or a request for amendment.

(f) Disclosure of records pertaining to an individual from a system of records shall be prohibited except with the consent of the individual or as otherwise authorized by 5 U.S.C. 552a, DoD 5400.11-R, and DoD 5400.7-R.⁷ When disclosures are made, the individual shall be permitted, to the extent authorized by 5 U.S.C. and DoD 5400.11-R, to seek an accounting of such disclosures from the DoD Component making the release.

(g) Disclosure of records pertaining to personnel of the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency shall be prohibited to the extent authorized by Pub. L. 86-36 (1959) and 10 U.S.C. 424.

(h) Computer matching programs between the DoD Components and the

⁷ See footnote 1 to § 310.1.